

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

TRISTAR INVESTORS, INC.,

Plaintiff,

v.

**AMERICAN TOWER CORPORATION,
AMERICAN TOWERS LLC, AMERICAN
TOWERS INC., AMERICAN TOWER
GUARANTOR SUB, LLC, AMERICAN
TOWER HOLDING SUB, LLC,
AMERICAN TOWER ASSET SUB, LLC,
AMERICAN TOWER ASSET SUB II,
LLC, AMERICAN TOWER
MANAGEMENT, LLC, AMERICAN
TOWER L.P., SPECTRASITE
COMMUNICATIONS, LLC, and
AMERICAN TOWER, LLC,**

Defendants.

**AMERICAN TOWER, LLC,
SPECTRASITE COMMUNICATIONS,
LLC, and AMERICAN TOWERS, LLC,**

Counter-Plaintiffs,

v.

**TRISTAR INVESTORS, INC., DAVID
IVY, ED WALLANDER, ROBERT GILES,
DALE GILARDI, JERRY VOGL, JOHN
LEMMON, MICHAL MACKEY, and
MATT NEWTON,**

Counter-Defendants.

CIVIL ACTION NO. 3:12-CV-499-M

**AMERICAN TOWER'S REQUEST FOR STATUS CONFERENCE
AND RESPONSE TO TRISTAR'S NOTICE OF AGREEMENT FOR
LIMITED EXTENSION OF FACT DISCOVERY DEADLINE**

On Friday, June 7, 2013, TriStar filed a Notice of Agreement for Limited Extension of Fact Discovery Deadline (Doc. 188). American Tower did not agree to that filing and, in light of that notice as well as the other pending matters before the Court, respectfully requests a status conference with the Court. American Tower further submits this response to ensure that there is no misunderstanding regarding the status of discovery and American Tower's need for relief from the Scheduling Order.

As the Court is aware, American Tower currently has a motion pending to modify the Scheduling Order (Doc. 138) based on the failure of TriStar shareholders to comply with subpoenas and the failure of TriStar to comply with basic discovery requests that were served on it months ago. At this late date, documents are still being produced in response to American Tower's subpoenas (as well as by the parties themselves). Additionally, on Friday, June 7, 2013 (just a few hours before TriStar filed its Notice), Magistrate Judge Ramirez determined that TriStar's discovery responses were still incomplete and for the *third time* ordered TriStar to answer interrogatories seeking the identity of cell tower sites where TriStar had evidence that: (1) a landowner had not granted TriStar a property interest due to any alleged conduct by American Tower; and (2) TriStar had paid more to acquire a property interest due to any alleged conduct by American Tower. *See* Doc. 189.

Although it is true that the parties have noticed certain depositions reflected in TriStar's Notice, extending the parties' time to take these depositions does not solve the problem that has been created by TriStar and its shareholders. As more fully described in the Motion (Doc. 138), the Reply in Support of the Motion (Doc. 159), and the Notices of Supplemental Authorities (Docs. 163 and 177), other depositions, including the depositions of SBA Communications CEO Jeffrey Stoops and Matt Sandoval and Jon Rotolo of Wood Creek Capital, cannot be taken prior

to the current fact discovery deadline due to the failure of TriStar's shareholders to comply timely with American Tower's subpoenas. Additionally, now that it has finally provided responsive answers to the interrogatories that were the subject of this Court's multiple orders, TriStar has identified twelve undeposed landowners whom TriStar contends it has evidence did not grant TriStar a property interest due to some alleged conduct by American Tower. American Tower's interrogatories were designed to identify the sites for which TriStar claimed it had evidence so that the landowners at these sites (as opposed to the 5,531 sites that TriStar initially alleged were at issue) could be deposed. Had TriStar properly answered these interrogatories when answers were due, by March 6, 2013, and identified these landowners/sites, American Tower would have deposed these landowners and tested their knowledge and TriStar's evidence weeks ago. As it is, identifying these sites on Sunday, June 9, 2013, puts American Tower at a significant disadvantage.

Given the prior Order extending the close of fact discovery until June 20 but deferring the "determination on the remainder of the Motion until after the hearing before Magistrate Judge Ramirez . . . on May 13" (Doc. 162) and that Magistrate Judge Ramirez subsequently held a second hearing on June 6 regarding TriStar's deficient responses to the exact same interrogatories at issue during the May 13 hearing, American Tower respectfully suggests that the most efficient method of resolving the pending issues would be for the parties to have a status conference with the Court, particularly in light of the upcoming current fact discovery deadline of June 20, the initial expert designation deadline of June 26, and the dispositive motion deadline of July 1.

Dated: June 11, 2013

Respectfully submitted,

/s/ Jon G. Shepherd

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CERTIFICATE OF SERVICE

On June 11, 2013, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Jon G. Shepherd

Jon G. Shepherd